



REPORTING AND WITHHOLDING ON PAYMENTS TO FOREIGN PERSONS

(A Closer Look)

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Step 1

Determine Status of Payee

- US Citizen
- Resident Alien
- Foreign Person (NRA, foreign corp, partnership, estate, trusts, etc.)



Step 1 (Continue) Determine Status of Payee Documentation

Form W-8BEN

Part I: Claim of beneficial ownership of income as a non-resident of the U.S.

Part II: Establishes a claim of tax treaty benefits.

Form 8233

Part I: Establishes a claim for beneficial ownership of income as a NRA individual receiving compensation for personal services

Part II: Establishes a claim of tax treaty withholding exemption and/or personal daily exemption.

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Step 2

If Foreign Person:

- Determine Source of Income
(US or Foreign – use sourcing rules)
- Determine Type of Income
Fixed, determinable, annual or periodic
income (FDAP)
or
Income effectively connected with a US
trade or business (ECI)



Step 3

Withhold Accordingly

If FDAP

- Withholding of 30% is required on Gross Income
- Reduced treaty rate, including exemption from tax may apply

If ECI

- Generally, no withholding if certain conditions are met

Step 4

Deposit and file

- Remit withholding to IRS per deposit requirements (See Pub. 515)
- File withholding tax return Forms 1042 and 1042-S per instructions found on Forms

Withholding Agent

- Any person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person subject to withholding.
- Individual, corporation, partnership, trust, association, or any other entity.

Withholding Agent Responsibilities

- Determine proper withholding based on documented status of foreign person
- Withhold and remit to IRS per deposit requirements
- File Forms 1042 and 1042-S per Form instructions
- Penalties for failure to file, pay, deposit and furnish information returns apply

Rental Income

- Treated as FDAP income
- Withholding of 30% required
- Election to treat income as ECI is available
- Withholding Agent must receive Form W-8ECI from each tenant

Disposition of US Real Property Interest by Foreign Persons

- Any foreign person disposing of a USRPI is required to have a withholding of 10% of the amount realized
- This 10% may be reduced if certain conditions exist and Form 8288-B is submitted and approved
- The withholding must be submitted to the IRS on Form 8288 and 8288-A by the 20th day of the Date of Transfer
- The Foreign Person is required to file a US Tax Return (Form 1040NR, 1120F)

Where to Get More Information

- Internal Revenue Code Sections 1441/1442/1445 and related Treasury Regulations
- IRS Publications 515, 519 & 901
- Instructions for Forms discussed
- <http://www.irs.gov/businesses/small/international/index.html>

Points of Contact

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